

Douglas Cole and Jane Iarussi

v.

Town of Loudon

Docket No.: 16237-95PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$628,090 (land \$67,990; buildings \$560,100) on a 27.4-acre lot with a residence and wholesale greenhouse operation (the Property). The Taxpayers also own, but did not appeal, seven other properties in the Town with a combined, \$295,770 assessment. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) spot assessing occurred when the Selectmen instructed the assessor to change the assessments on the greenhouses;
- (2) greenhouses are single-purpose structures and depreciate quickly;
- (3) the Town's cost per square foot and depreciation are wrong and the greenhouses are attached and should be assessed as one unit with higher depreciation;

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- (4) a December 1995 letter from Appraiser Daniel R. Lynch of First Pioneer Farm Credit indicated value ranges from \$4.00 to \$6.00 per square foot;
- (5) CLT Evaluation Services' (CLT) commercial greenhouse schedule uses lower replacement costs than the Marshall Valuation Service cost manual used by the Town;
- (6) another greenhouse in Town is assessed similarly to the original assessed value of the Property; and
- (7) the greenhouses have a market value of \$194,720; therefore, the total assessed value should be no more than \$392,110.

The Town argued the assessment was proper because:

- (1) the third greenhouse was added in 1995; the Selectmen commonly look at the appraiser's work and asked the appraiser to review the values;
- (2) upon review, it was found the reasons for the high depreciation in 1990 were no longer warranted and the values were adjusted based on Marshall Valuation Service life expectancy guidelines;
- (3) the Town also spoke with Mr. Lynch who indicated his comments to the Taxpayers dealt with older wood frame greenhouses (20 years or more), which are frequently removed and rebuilt;

(4) the CLT numbers were not lower than the Marshall Valuation Service numbers; and

(5) the "comparable assessment" used by the Taxpayers is underassessed by the Town which is not a reason for reducing the Taxpayers' assessment.

Based on the assessment-record card and photographs submitted as evidence, it was evident to the board that the Property, in addition to the appealed glass greenhouses, consisted of 27.4 acres and other structures (a dwelling, barn, swimming pool, shed and "hoop" greenhouses) on which no evidence was submitted. Consequently, the board requested its review appraiser to review the non-appealed components of the Property (see board order of January 26, 1998) and file a report as to the appropriateness of the assessment of the Property's non-appealed components. See Appeal of Sokolow,

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137 N.H. 642 (1993). Mr. Bartlett filed his report on February 26, 1998 and copies were supplied to the parties with additional time for them to comment.

In addition to suggesting revisions to several of the non-appealed assessment components, Mr. Bartlett also listed and valued 11 "hoop" greenhouses.

The Taxpayers' agent ("Mr. Lutter"), responded arguing such "hoop" greenhouses were not taxable as real estate as they were temporary and other similar greenhouses in Town had not been assessed. The board on April 6, 1998 viewed the large glass greenhouse facility and the various "hoop" greenhouses that existed at that time to better determine their status as real or personal property.

#### **Board's Rulings**

Based on the evidence, the board finds the proper assessment to be as

follows.

Land	\$ 67,900
Residence	118,200
Pool and Shed	12,075
Barn	20,400
Hoop Greenhouses	12,325
Glass Greenhouse	<u>246,050</u>
Total	\$476,950

At the hearing, the Taxpayers' sole argument was that the glass greenhouse complex was overassessed. The Taxpayers submitted no evidence relative to the other components (land, residence, outbuildings). The board initially found the glass greenhouses were overassessed. However, the board has the responsibility to consider all real estate owned by a taxpayer within a taxing jurisdiction in determining whether the taxpayer's entire estate is properly assessed. See Appeal of Sunapee, 126 N.H. 214 (1985). Consequently, the board asked its review appraiser to review the Property and issue a report on the value of the other property components. The board's findings as to the market value of the various property components is based on the evidence submitted at the hearing, including photographs, Mr. Bartlett's report and the view of the Property by the board.

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#### Land

The board finds the land assessment of \$67,990 to be proper. In addition to the assessment-record card, the only evidence of the land's value was contained in Mr. Bartlett's report. Mr. Bartlett found, based on his knowledge of sales contained in the Loudon Reassessment file (Docket No.:

15971-96RA), that the land assessment was in a reasonable range of value.

#### Dwelling

Arriving at a certain value for the dwelling for tax year 1995 is difficult due to the significant renovations that have occurred since that time. However, based on the assessment-record card descriptions and Mr. Bartlett's report including his description of the renovations that have been completed since 1995, the board finds Mr. Bartlett's assessed value of \$118,200 is appropriate for the 1995 tax year.

#### Pool and Shed

The board finds the combined assessed value of \$12,075 for the pool and shed to be appropriate based on the board's view, Mr. Bartlett's report and the board's general knowledge of the contributory value of swimming pools to real estate.

#### Barn

The board finds the proper assessment for the barn to be \$20,400. The board's value is based primarily on Mr. Bartlett's report. However, the board, based on its view, has reduced the physical depreciation by 10% (from 50% to 40%), resulting in an assessed value of \$20,400. The barn appears to be well maintained, provides significant storage area and has the utility of a two-bay garage in addition to its storage capability.

#### Hoop Greenhouses

The Town did not assess any "hoop" greenhouses in 1995, and there was no mention made of them at the hearing. In his report Mr. Bartlett listed 11 "hoop" greenhouses and estimated their collective assessed value at \$25,100. In response to Mr. Bartlett's report, Mr. Lutter raised the issue of whether

the "hoop" greenhouses were taxable as real estate. Because "hoop" greenhouses can vary greatly in their nature and annexation to the real estate, the board viewed the Property to obtain first-hand knowledge of the nature of the "hoop" greenhouses. The board relies on Mr. Cole's representation and photographs shown at the view that, instead of the 11 listed in Mr. Bartlett's report (Mr. Bartlett's source was the 1997 property-record card), there were four large "hoop" greenhouses and three smaller "hoop" greenhouses in 1995. The parties were provided an opportunity to correct the record as to the number of "hoop" greenhouses, but no contrary information was received during the time provided for response.

The board finds the four larger greenhouses are of such a nature to be considered real estate, while the three smaller greenhouses are personal property. The four larger greenhouses are placed on a six to eight inch gravel pad with a poured concrete walkway down the center of these greenhouses. Water and electricity are both supplied underground for the four larger greenhouses. The board finds the gravel, the concrete and the underground water and power are real estate improvements made to receive and functionally use the four larger greenhouse structures. Certainly, removing the greenhouses' metal hoops and the double plastic covering can be done without much effort. However, the concrete, gravel and underground water and electricity associated with the greenhouses are not easily removed. Such improvements to the real estate clearly show the owners' intent to make these greenhouses more of a permanent nature, and thus, fixtures taxable as real estate.<sup>1</sup> In arriving at this conclusion, the board reviewed the court's

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<sup>1</sup>These improvements are very similar to campground site improvements which are commonly valued in assessing campgrounds by the cost approach. Further, such improvements are routinely part of the base replacement costs of other simple structures such as barns, cottages, etc. To assess such improvements in those instances and not here, could raise an equal protection question under

discussions of fixtures in New England Telephone and Telegraph Co. v. City of Franklin, 141 N.H. 449 (1996) and in Crown Paper Co. d/b/a Crown Vantage v. City of Berlin, \_\_ N.H. \_\_ (December 31, 1997).

As to value, the board adopts Mr. Bartlett's assessment methodology and depreciations for the four greenhouses (which are the first four in Mr. Bartlett's report and results in a total value of \$12,325). The relatively high depreciation (75% physical and 50% functional) of the greenhouses' replacement cost recognizes that the majority of the value is in the site improvements associated with the greenhouses.

The three smaller greenhouses do not have such substantial site improvements. While the greenhouses are on gravel pads, there is no concrete walkway and the water and electric connections are above ground and of a more temporary nature. These greenhouses do not have the improvements associated with them that reflect an intention of permanency and thus, they remain not taxable as personalty.

#### Glass Greenhouse

The board finds the proper assessment for the glass greenhouse component to be \$246,050. This is based on the following revisions to the Town's greenhouse assessment:

- 1) the replacement cost should be determined based on the total greenhouse area rather than on the historical component construction;

2) the replacement cost square foot price is taken from the 1996 Marshall Valuation Service manual for good aluminum/galvanized steel greenhouses (section 64, page 6) with appropriate current and local cost multipliers; and

3) ten percent (10%) physical depreciation was applied, no functional depreciation was determined to be necessary; and twenty percent (20%) economic depreciation was applied for the limited market for this special purpose property and the risk associated with it.

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Before the board addresses these summary findings, some general comments are in order.

First, the evidence and view indicated the glass greenhouses are of good quality, of the most current design and technology and efficient structures for the production of various horticultural products. Further, these style greenhouses are significantly more substantial than many other commercial greenhouses that are wood-frame or metal-hoop frame with double polyethylene covering. These greenhouses are metal-framed glass-covered gutter-connected modular units with a full concrete slab.

Second, based on the specialized design and utility of these greenhouses, the board concludes, as the parties' agreed, that the structures are special-purpose properties. The general concept of special-purpose buildings is that they are uniquely adapted to a single use and any conversion to other uses would require extensive renovations. Further, if a property is constructed for a special purpose, its highest and best use can be considered

to be that purpose as long as it can still functionally fulfill its original purpose. See Appraisal Institute, The Appraisal of Real Estate, 270 10th ed. (1991); International Association of Assessing Officials, Property Appraisal and Assessment Administration, 169, (1990); Joan Youngman, Legal Issues in Property Valuation and Taxation: Cases and Materials, 41 (1994).

Consequently, the board finds it is appropriate that the greenhouses be valued on a replacement cost basis and any functional and economic obsolescence be determined in the context of the Property's special purpose.

A basic principle in all replacement cost calculations is to estimate its replacement cost based on its current configuration as opposed to its historical phased construction. Clearly, any person purchasing this Property would be viewing it as it exists in 1995 as three connected modular

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greenhouses as opposed to three detached units. (A common example of this concept is that residences that have been added onto over centuries are not valued on a section by section basis but rather on the total living area.)

In determining a proper replacement cost per square foot for the greenhouses, the board reviewed the Town's replacement cost calculations for the Property, the Town's replacement cost calculations for Pleasant View Gardens (another greenhouse operation in town), and the methodology from the Marshall Valuation Service. The board noted that the price per square foot for the Property's greenhouses was derived from the 1986 Marshall manual. However, the 1.25 adjustment appears not to be derived from Marshall but

rather is the trending adjustment used for the building components assessed from the State of New Hampshire's appraisal manual. Further, the board noted the 1.25 trending adjustment was not used in the Pleasant View Gardens assessment. Consequently, the board determines that the 1.25 factor was an error as applied to the glass greenhouse. The board concludes that the proper price per square foot from Marshall should be based on the good aluminum/steel greenhouse category and an area of 50,000 square feet. This price per square foot of \$6.50 should then be adjusted by a 1.1 factor (glass covering vs. fiberglass), a current cost factor of 1.06 and a local multiplier of .92. These adjustments result in a \$7.02 price per square foot or \$341,750.

Based on the greenhouses' age, condition and expected life, the board agrees the Town's physical depreciation of ten percent (10%) is reasonable.

The board finds no evidence was submitted to warrant applying any functional obsolescence to the greenhouses. The greenhouses are of the latest technology and are specifically designed for efficient wholesale greenhouse production.

Evidence was submitted to the effect that greenhouses lose a substantial amount of their capital investment the moment they are fully constructed. However, despite reasonable efforts on both parties' behalf, no sales or definitive evidence was submitted as to the extent of such economic

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depreciation. For example, an appraiser for Farm Credit stated in a letter that he normally valued greenhouses no higher than \$4.00 to \$6.00 per square foot. However, no definitive market data was submitted to support his valuation ceiling. The board, however, finds that due to the inherent risk involved in the greenhouse business and the limited market for such a special

purpose property, some economic depreciation is warranted. While the current Taxpayers are investing significant capital to construct these greenhouses, it is unlikely that any purchaser would pay the full replacement cost for the greenhouses. Any new owner would likely not have the established markets, skill and experience that the Taxpayers have developed. While arguably these factors are related to the total going-concern value (which includes business value and real estate value), they do affect what such a buyer would pay for the real estate. It is not possible from the evidence to measure what economic depreciation is reasonable; however, the board concludes the Town's original total depreciation (functional and economic) for this type of greenhouse is excessive. On the other hand, no economic depreciation is also unreasonable. Based on the board's experience and judgment<sup>2</sup>, the board concludes the Town's current twenty percent (20%) economic depreciation is reasonable.

In short, the resulting assessment equates to \$5.05 per square foot (\$246,050 ÷ 48,680 square feet) which appears to be more appropriate based on the evidence than the Town's \$8.85 per square foot assessment.

If the taxes have been paid for the tax year 1995, the amount paid on the value in excess of \$476,950 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment

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<sup>2</sup>"Given all the imponderables in the valuation process, [j]udgement is the touchstone." Public Service Company v. Town of Ashland, 117 N.H. 635, 639 (1977).

for 1996 (the Town underwent a general reassessment in 1997). The Town shall use the ordered assessment for 1996 with good-faith adjustments under RSA 75:8 (e.g. revisions for additions or renovations). RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark Lutter, Agent for Douglas Cole and Jane Iarusi, Taxpayers; Jeffrey M. Earls, Agent for the Town of Loudon; and Chairman, Selectmen of Loudon.

Date: May 14, 1998

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Valerie B. Lanigan, Clerk

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Douglas Cole and Jane Iarussi

v.

Town of Loudon

Docket No.: 16237-95PT

ORDER

During the board's deliberations and review of the Property's assessment-record card, the board had several concerns relative to the assessment of the balance of the Property's components, principally the values on the dwelling and barn. As stated in Appeal of Town of Sunapee, 126 N.H. 214 (1985), the board is required to determine proportional assessment for the total Property; therefore, the board has directed its review appraiser, Mr. Scott Bartlett, to make arrangements with the Taxpayers' agent to view the Property and file a report as to the appropriateness of the assessment of the Property's non-appealed components.

Before the board concludes its deliberations, Mr. Bartlett's report will be made available to the parties and a period of time will be allowed for written comments.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Mark Lutter, Agent for Douglas Cole and Jane Iarussi, Taxpayers; Jeffrey M. Earls, Agent for the Town of Loudon; and Chairman, Selectmen of Loudon.

Date: January 26, 1998

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Valerie B. Lanigan, Clerk

Douglas Cole and Jane Iarussi

v.

Town of Loudon

Docket No.: 16237-95PT

ORDER

This order responds to Mr. Mark Lutter's, Taxpayers' agent, request of March 27, 1998 to submit additional information relative to the taxability of "temporary hoop greenhouses."

The board denies the request. Much of the information Mr. Lutter wishes to submit is common knowledge and would not aid the board in arriving at its decision. To see first hand the nature of the greenhouses, the board viewed the greenhouses on April 6, 1998. The board did allow the parties additional time to comment on Mr. Bartlett's report. Mr. Lutter did file a letter stating his arguments why the "temporary hoop greenhouses" were not taxable. Further, Mr. Lutter wanted to submit a copy of Crown Paper Company d/b/a Crown Vantage v. City of Berlin, \_\_ N.H. \_\_, slip. op. (December 3, 1997). The board is aware of and has access to the Crown Vantage decision and to the extent necessary will review and apply it in its deliberations in this appeal.

On the view, the Taxpayer made available to the board an aerial

photograph showing the Property as of 1995. The Taxpayer and the photograph indicated in 1995 there were four "larger" hoop greenhouses and three "smaller" hoop greenhouses. As this is new evidence and the Town was not

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present at the view, the board requests the parties respond within 10 days of this order if their understanding of the number of large and small hoop greenhouses in 1995 is different than stated above.

The board will then finalize its deliberations and issue the decision.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Mark Lutter, Agent for Douglas Cole and Jane Iarussi, Taxpayers; Jeffrey M. Earls, Agent for the Town of Loudon; and Chairman, Selectmen of Loudon.

Date: April 23, 1998

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Valerie B. Lanigan, Clerk

Douglas Cole and Jane Iarussi

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Town of Loudon

Docket No.: 16237-95PT

**ORDER**

After the hearing in this case, the board had its review appraiser review the file and the Property and his report is included with this order. (Additional addendum to the review appraiser's report, i.e., photos and assessment-record cards, are contained in the board's file.) If the parties have any comment to the report, they shall file those comments within 20 days of the clerk's date below. When the 20 days has run, the board will issue the decision.

The parties are also advised to see if the report can be used to resolve this appeal through settlement.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Valerie B. Lanigan, Clerk

**CERTIFICATION**

I hereby certify that the foregoing order has been mailed, postage prepaid to Mark Lutter, representative for the Taxpayers; Jeffrey M. Earls, Agent for the Town of Loudon; and Chairman, Selectmen of Loudon.

Date:

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Valerie B. Lanigan, Clerk

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